IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 144 of 1997

with

CRIMINAL APPEAL No 364 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNNUSINGH RAGHUNANDANSINGH THAKUR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 144 of 1997
   MR EE SAIYED for Petitioner No. 1
   Mr.M.A. Bukhari for Respondent No. 1
2. Criminal Appeal No. 364 of 1997
   MS BANNA S DUTTA for Petitioner No. 1
   Mr. M.A. Bukhari for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 03/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellants have preferred this appeal against the judgment and order dated 28th January, 1997 of the learned Additional Sessions Judge, Surat in Sessions Case no.130/1995 by which both the accused persons were convicted for the offence under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and each of them was sentenced to undergo rigorous imprisonment for a period of 15 years and to pay a fine of Rs.1,00,000/-, in default, to undergo further rigorous imprisonment for a period of one year.

2. The prosecution case was that on the basis of information received by the complainant Police Inspector Shri G.P.Puvar that the accused persons Munnusing Raghunandsing Thakur and Radheshyam Nandar Mishra, resident of Satyanarayannagar were going to pass with narcotic drug "Charas" from Cotsfield Road, a watch was kept and in presence of Panch Witnesses these two accused persons were apprehended with charas at 21.00 hrs. on 27-3-1995. Both the persons were Hindi speaking persons and were therefore questioned in Hindi. They were offered whether they would like to be searched in presence of a Class I officer. Even though they refused that offer, they were searched in presence of Class I officer-Assistant Commissioner of Police Shri Rangdekar. On searching the person of accused Munnusing four slabs of charas were found in a plastic bag which was tugged in his pant at his waist. Similarly, from the person of Radheshyam three slabs of charas were found. All these were duly weighed in presence of the Panchas. From each slab 20 grams of charas was taken and separately sealed. It was forwarded to the Forensic Science Laboratory (FSL) for analysis and as per the reports received from the FSL, the material was found to be charas. The trial Court relying upon the version of the Panch Witnesses, Scientific Officer as well as the police witness and the documentary evidence on record, found both the accused guilty of the offence under Section 20(b)(ii) of the said Act imposing the aforesaid sentences on them.

3. It was contended by the learned Counsel appearing for these two accused persons that the sentences imposed

on them were harsh and that both the accused persons were poor persons on whom only the minimum sentence ought to have been imposed. The learned Counsel also challenged the impugned decision on the ground that the guilt of the accused was not established beyond reasonable doubt. It was also submitted that trial Court ought not to have relied upon the evidence of Police Officers who were interested witnesses.

4. Panch Gulammohmed has in his deposition Exh.12 proved the Panchnama of the raid. The initial portion of the Panchnama is at Exh.13 and the subsequent at Exh.14. He has stated that the other Panch Thakore Muljibhai Vaidya was also alongwith them. Initially the police staff was searched and nothing objectionable was found from them. Thereafter, both the Panch Witnesses were also searched and nothing objectionable was found from them. After drawing the first part of the Panchnama at Exh.13 the Panchas alongwith the police party went to Udhna Old Octroi Post and the members of the raiding party got scattered and positioned themselves. The measuring scales and seals were kept ready. After about half an hour, two persons answering the description received in the information were seen coming and they were apprehended. They gave their names as Munnusing Raghunandsing Thakur and Radheshyam Nandar Mishra. They were informed that they were to be searched under the provisions of the said Act and were asked as to whether they would like to be taken to the Magistrate or whether a Class I officer should be called for their search. Both of them said that they had brought charas and that they should be pardoned. They were again asked whether they wanted to be taken to a Magistrate or a Class I officer should be called. They were asked in Hindi. Both of them refused the offer. In the meantime, Assistant Police Commissioner Shri Rangnekar had come there and both these accused were searched in his presence. The Panch Witness has further stated that a plastic bag containing four slabs of material was recovered from the accused no.1 Munnusing and a similar bag containing three slabs was recovered from the accused no.2 Radheshyam. The material appeared to be charas. The Police Inspector Shri Puvar asked them whether they had any licence in respect thereof which they denied. All the slabs of charas were then weighed and from each of them 20 grams of material was taken. Separate samples of 80 grams and 60 grams were taken from slabs recovered from the respective accused persons. The Muddammal was accordingly seized under the Panchnama Exh.14. The Muddammal bags were affixed with labels duly signed by the Panchas. All the documents under which the Muddammal

was sealed are at Exhs.15 to 24 and they have been duly proved in the deposition of this witness. There is nothing brought out in the cross-examination of this witness which can create even the slightest doubt over the veracity of his version. He is fully corroborated by the Panchnamas Exhs.13 and 14.

5. From the deposition of the Assistant Director Shri Prahladrai Labhshanker Joshi (Exh.26), it is established that two sealed plastic bags - one containing 30 pieces marked A/1 to A/30 weighing 80.950 grams and the other containing 15 pieces marked B/1 to B/15 weighing 60 grams were handed over for chemical analysis and botanical examination to Mrs. R.N. Shah and from the analysis report at Exh.27, it transpired that the said material was charas. The prosecution witness Mrs. Ramnikant M. Shah in her deposition Exh.29 has proved her report at Exh.28. She has described the manner in which she had examined the samples which according to her were found to be cannabis sativa (charas). Thus, the expert evidence clearly established that the material which was seized from the accused persons was charas. The Police Inspector Shri Puvar in his deposition has narrated the manner in which the raid was arranged and is fully corroborated by his complaint Exh.36 as well as by the independent evidence of Panch Witness. His deposition clearly shows that all the requirements of the provisions of Section 41 to 57 of the said Act were duly complied with and no contention has been raised before us on the ground of violation of any statutory requirement.

6. The oral and documentary evidence produced by the prosecution, therefore, clearly establishes the guilt of both the accused persons and we find ourselves in complete agreement with the reasoning adopted by the trial Court and it findings for holding both the accused guilty for the offence under Section 20(b)(ii) of the said Act. It appears from the record that both the accused persons were very young and this was their very first offence. Having regard to all the attendant facts and circumstances of the case, in our opinion, if the sentence of rigorous imprisonment of 15 years is reduced to 10 years and if the sentence of fine is confirmed, it would serve the ends of justice. We accordingly passed the following order:

The appeals are partly allowed and while confirming the conviction of both the accused persons, the sentence of rigorus imprisonment of 15 years imposed on each of them is reduced to 10 years rigorous imprisonment. The sentence of fine stands confirmed in

respect of both the accused persons.

(R.K.Abichandani,J.)

(D.K.Trivedi,J.)

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